Supreme Court, U.S.
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No. 94-1199

In The

Supreme Court of the United States

October Term, 1994

WILLIAM J. ZISK,

Petitioner,

v.

HIGH STREET ASSOCIATES

Respondent

On Petition For Writ Of Certiorari To The Superior Court For The Judicial District of Middlesex, State of Connecticut

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RESPONDENT'S BRIEF IN OPPOSITION

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February 6, 1995

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QUESTION PRESENTED

Is the Petitioner entitled to access to this Court for review of the actions of the Courts of the State of Connecticut?

LIST OF PARTIES

The only proper parties in this action are petitioner, William J. Zisk, and respondent, High Street Associates, which is a partnership organized and existing under the laws of the State of Connecticut. Although Petitioner also names as parties Mary A. Zisk, Edward J. Zisk, Donald R. Zisk, Architects Equity Inc. and A.C.F. Inc., they are not proper parties because they were not parties to any proceeding in the Courts whose judgment is sought to be reviewed.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
COUNTER-STATEMENT OF THE CASE	2
MISSTATEMENTS OF FACT AND/OR LAW	4
SUMMARY OF THE ARGUMENT	8
REASONS FOR DENYING THE WRIT	9
I. PETITIONER'S PETITION FOR WRIT OF CERTIORARI SHOULD BE DISMISSED FOR LACK OF JURISDICTION IN THAT THERE IS NO FEDERAL QUESTION PRESENT IN THIS MATTER	9
II. EVEN IF THIS COURT FINDS A FEDERAL QUESTION, PETITIONER'S PETITION FOR WRIT OF CERTIORARI SHOULD STILL BE DISMISSED BECAUSE ANY FEDERAL QUESTION IS NOT SUB-STANTIAL, NOT RAISED IN A TIMELY MANNER, AND MOREOVER, THE CONNECTICUT STATE COURT DECIDED THE CASE EXCLUSIVELY ON ADEQUATE GROUNDS OF STATE LAW	12
III. THE PETITION FOR WRIT OF CERTIORARI IS DEFECTIVE BECAUSE PETITIONER DOES NOT APPEAL FROM THE JUDGMENT OR DECREE FROM THE HIGHEST COURT IN CONNECTICUT	14

Page

CONCLUSION 15

APPENDIX

APPENDIX A -
Copy of Certificate of Distribution A1

APPENDIX B -
Conn. Gen. Stat. Section 45a-436 including Historical and Statutory Notes, Transfer of Section B1

TABLE OF AUTHORITIES

CONTENTS PAGE

Cases Cited:

Angel v. Bullington, 330 U.S. 183 (1947) 10
Herb v. Pitcairn, 324 U.S. 117 (1945) 11, 12
Johnson v. New Jersey, 384 U.S. 719 (1966) 14

McCoy v. Shaw, 277 U.S. 302 (1928) 13, 14
Mullaney v. Wilbur, 421 U.S. 684 (1975) 10, 11
Snowden v. Red River and Bayou, 284 U.S. 592 (1932) 13

Statutes Cited:

28 U.S.C. § 1257 ..... 8, 9, 10, 14
Connecticut General Statutes § 45-273a 6
Connecticut General Statutes § 45a-436 6
Connecticut General Statutes § 46-12 6

Rule Cited:

Supreme Court Rule 10 ..... 9, 10

Other Authorities Cited:

C. A. Wright, The Law of Federal Courts (1984) 10, 13

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, High Street Associates, respectfully asks this Court to deny the petition for certiorari filed by William J. Zisk seeking review of the judgment of the Superior Court for the Judicial District of Middlesex dated May 5, 1993 as revised by the Court on May 16, 1993.

COUNTER-STATEMENT OF THE CASE

The Petitioner's mother and father, William W. Zisk and Mary A. Zisk, purchased a parcel of land of approximately 32 acres and known as 106 High St. in the Town of Haddam, Connecticut, on December 3, 1943. At the time of the purchase the Petitioner was a child. Until sometime in the 1960's the Petitioner's mother and father resided in the family home on that property and raised their four children, including the Petitioner, therein.

The Petitioner left home to serve in the Armed Forces when he was a young man and returned home briefly after his military service before moving to California. The Petitioner never lived anywhere else on the subject property except in the Zisk family home and there was no conveyance of any portion of that property to the Petitioner (nor to any other family member for that matter) by William W. Zisk and/or Mary A. Zisk.

When Petitioner's father died in 1969 owning an undivided one-half interest in the subject property, Connecticut's law of intestate distribution dictated that Petitioner's father's one-half interest in the property would devolve to his heirs-at-law in the following proportions: 2/3 of that one-half interest to his surviving spouse, who is the Petitioner's mother, and 1/3 of his one-half interest to each of the children of William and Mary Zisk. Mathematically, this resulted in Mary A. Zisk, widow of William W. Zisk, owning an undivided three-quarters interest in the 32 acre parcel and the Petitioner and his three siblings owning a 1/12th share each in the parcel of land on which stood the family home. The Petitioner's mother continued to reside in the State of California until her death in 1994, renting the family home to tenants and collecting the rents.

The Petitioner's mother and other siblings of the Petitioner

marketed the family home and acreage on and off for over twenty years until a principal of the Respondent High St. Assoc., Mr. Steven Rocco, engaged in several negotiations with them and ultimately agreed to purchase the property. At that time Mr. Rocco also negotiated the purchase with the Petitioner but they never reach an agreement as to the sale of Petitioner's interest in the property. A conditional contract for sale was entered into between Rocco, the Petitioner's mother and three of his siblings which also conferred a limited power of attorney on Rocco to commence a "partition" lawsuit in the State of Connecticut to resolve the ownership issues in accordance with Connecticut law. That proceeding was terminated on the day it was assigned for trial when one of the siblings withdrew from Rocco the authority to act as attorney-in-fact for her.

Subsequent to the termination of that lawsuit a non-conditional sale of a five-sixth's interest in the same property was consummated between the Respondent, High St. Assoc., the Petitioner's mother and two of his siblings and a property deed was acquired for that interest by the said Respondent. At the same time Petitioner's sister and the Petitioner entered into a transaction whereby the Petitioner acquired his sister's one-twelfth share thereby increasing his interest to a one-sixth share of the premises.

Subsequent to the two transactions which resulted in the two owners of the property, the Petitioner and the Respondent, High St. Associates, owning a 1/6th and 5/6th interest in the subject property respectively, a new "partition" lawsuit was instituted by the Respondent in the Superior Court for the Judicial District of Middlesex at Middletown, Connecticut. At the conclusion of a trial on the merits at which the Respondent was present and represented by counsel, the Honorable Daniel Spallone, Trial Referee of the State of Connecticut, ordered a

partition sale of the property be held. An appeal was taken by the Petitioner to Judge Spallone's decision to the Connecticut Appellate Court, and after a due hearing on the arguments, which were also briefed, the Appellate Court affirmed the lower court's decision. The Petitioner then petitioned the Connecticut Supreme Court for a Writ of Certiorari to be granted in this case, which petition the Connecticut Supreme Court denied.

Following the aforesaid proceedings and while no stays, statutory or court ordered, were in effect, the partition sale was held and the proceeds of the sale placed with the Clerk of the Court for the Judicial District of Middlesex. This petition for Writ of Certiorari was filed subsequent to all of the foregoing proceedings taking place.

MISSTATEMENTS OF FACT AND/OR LAW

The Respondent, High Street Associates, hereby represents that the following statements of fact and/or law reported in Petitioner's brief are misstatements and are represented by Respondent to be factually incorrect as to the best knowledge and belief of the Respondent and/or legally incorrect as the case may be:

1. Petitioner's Brief, page 3

"As a 'wedding gift' to the newlyweds, William W. Zisk and Mary A. Zisk (father and mother) granted a four acre portion of the subject 106 High Street, Higganum, Connecticut property, adjacent to Route 81, to their son, William J. Zisk."

The Respondent represents that no documentary or testimonial evidence was presented, except for the oral, self-serving

assertion of William J. Zisk, that a four acre parcel of land was ever transferred to him. To the contrary, Respondent's principal testified that in his dealings with Mary A. Zisk, the mother of William J. Zisk, she always maintained that she and her deceased husband were the only owners of the family property. When Petitioner's father died in 1969, the Petitioner and his siblings received an intestate share of the one-half interest their deceased father owned pursuant to Connecticut Intestate Law.

2. Petitioner's Brief, page 3

"As a condition of the 'granted gift', William W. Zisk and Mary A. Zisk agreed to hold the gifted 4 acre parcel in a 'trust' within the overall thirty-two acre homestead . . . "

In all of Respondent's conversations with Mary A. Zisk, Petitioner's mother, she made it clear she knew of Petitioner's claims but her assertions were that no trust ever existed and the family property was free and clear of any claims by her children except for the intestate share each was provided by Connecticut's laws of intestate succession on the passing of her husband, William W. Zisk.

3. Petitioner's Brief, page 4

"In fact, the decedent held no interest in the four acre parcel, having conveyed the same to William J. Zisk, and, as to the remaining 28 acre parcel, the entire interest therein was subject to administration by the Probate Court in Haddam, Connecticut."

The Petitioner's father never divested himself of any interest in the approximately 32 acres he and his wife, Mary A. Zisk, purchased in 1943. They never conveyed a four acre parcel from that parcel to the Petitioner as he asserts. As to the

portion of the property which was subject to Estate Administration in the Probate District of Haddam, Connecticut, on the passing of Petitioner's father, William W. Zisk, only a one-half interest in the 32 acres was subject to distribution. This was due to the fact that when William W. Zisk and Mary A. Zisk obtained title to their property by deed in 1943, the title they received resulted in a tenancy-in-common between them so that each possessed an undivided one-half interest to the entire parcel requring that that interest be distributed by will or law of intestacy at death.

4. Petitioner's Brief, page 4

"As to the interest in the Estate of William W. Zisk held by Mary A. Zisk, the applicable Connecticut General Statutes, Title 46, Chapter 809, Section 46-12 clearly establishes a 'survivor' to the Husband and Wife Deed to hold a life use interest, which is not marketable."

This is a misstatement of fact and Connecticut's law. Connecticut General Statutes, Section 46-12 was transferred to Connecticut General Statutes, Section 45-273a in 1979 and the provisions thereof once again transferred to Connecticut General Statutes, Section 45a-436 in 1991 (see Appendix B). That statute pertains to intestate succession upon the death of a spouse and a spouse's right to seek a statutory elective share against the provisions of the will of a decedent spouse in which the surviving spouse has been excluded or otherwise wishes to make such election. It does not stand for the legal principle advanced by Petitioner in his brief. Moreover, the 1943 deeded title to William W. Zisk and Mary A. Zisk did not create a joint tenancy with survivorship rights.

4. Petitioner's Brief, page 4

"The disputed title to the Zisk Family Estate could not and was not capable of being resolved in a partition action, without the active indispensable [sic] inclusion and participation of the members of the Zisk family."

This is a misstatement of fact and law because the trial court was satisfied that the parties before it represented the necessary parties to the partition lawsuit and it proceeded to judgment having made that determination. The judgment of the Superior Court for the Judicial District of Middlesex at Middletown, Connecticut was subsequently affirmed on appeal wherein the same issue was briefed and argued.

5. Petitioner's brief, page 8

"Immediately thereafter, and during the period when an automatic stay of execution of the judgment was in effect, the respondent noticed a hearing, to be heard before the Honorable Daniel F. Spallone, in Superior Court at Middletown, on July 15, 1994, to set a date to execute on the judgment . . . "

The aforesaid Motion for Instructions referred to by Petitioner was dated June 8, 1994, a date after the Connecticut Appellate Court had affirmed the lower court's judgment on May 31, 1994 and before the Petitioner filed a Motion for Reargument or Reconsideration in the Appellate Court. The filing of the Motion for Instructions to the Committee for Sale was not filed when any stay of execution of the judgment was in effect. Before the trial Court ruled on Respondent's Motion for Instructions to Committee, the Appellate Court denied the Petitioner's Motion for Reargument or Reconsideration. Therefore, there was no action pending on which stay of execution could be had. When the trial Court issued its instructions to the Com-

mittee for Sale, no stay was in effect.

SUMMARY OF THE ARGUMENT

Under 28 U.S.C. § 1257, the Supreme Court may only review a State Court judgment if a federal question is raised. Because no federal question is presented in this matter, this Court should dismiss Petitioner's Petition for Writ of Certiorari for lack of jurisdiction.

Assuming, arguendo, that this Court were to consider Petitioner's Petition for Writ of Certiorari as raising a federal question, the jurisdiction of this court would still not be invoked for several reasons. To begin with, any raising of a federal question must be substantial. Here, the raising of any federal question is not substantial because it is wholly formal and devoid of merit. Furthermore, no federal question was raised in a proper and timely manner. Petitioner makes an attempt to raise a federal question for the first time by merely using the buzz words "due process" in his Petition for Writ of Certiorari. In addition, the jurisdiction of this Court is not invoked because the Connecticut State Court judgment rests exclusively on adequate state grounds.

Lastly, Petitioner's Petition for Writ of Certiorari should be dismissed because Petitioner requests this court to review the judgment or decree of the trial court rather than requesting this Court to review the judgment or decree rendered by the highest court in Connecticut.

REASONS FOR DENYING THE WRIT

I

PETITIONER'S PETITION FOR WRIT OF CERTIORARI SHOULD BE DISMISSED FOR LACK OF JURISDICTION IN THAT THERE IS NO FEDERAL QUESTION PRESENT IN THIS MATTER.

Petitioner William J. Zisk's petition for a Writ of Certiorari should be dismissed because the underlying case does not fall under those categories of cases subject to Supreme Court review. A Writ of Certiorari for Supreme Court review of a state Court judgment may be sought only under limited circumstances as set forth in 28 U.S.C. § 1257, as follows:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

In addition, rule 10 of the Supreme Court Rules set forth the following considerations governing review on a Writ of Certiorari:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judi-

cial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The case at bar, which was a complaint for partition by sale, clearly does not fall under any categories as required by 28 U.S.C. § 1257, and as set forth in Rule 10 of the Supreme Court Rules. More specificially, the categories set forth in that statute require a federal question in order to invoke this jurisdiction of the Supreme Court. C. A. Wright, The Law of Federal Courts 743 (1984). The Supreme Court is the ultimate decision maker on whether there is a federal question. Angel v. Bullington, 330 U.S. 183, 189 (1947). ("Whether . . . claims are based on a federal right or are merely of local concern is itself a federal question on which this Court . . . has the last say.") The underlying action for partition involves only matters of State law regarding Partition by Sale. In other words, the case does not raise or implicate any federal question.

It is well-settled that a State Court interpretation of state law is the final authority. The U.S. Supreme Court in Mullaney v. Wilbur, 421 U.S. 684 (1975), acknowledged this long standing principle as follows:

> This Court . . . repeatedly has held that State Courts are the ultimate expositors of State law, see, e.g. Murdock v. City

> of Memphis, 20 Wall 590, 22 L.Ed. 429 (1875); Winters v. New York, 333 U.S. 507, 92 L.Ed. 840, 68 S.Ct. 665 (1948), and that we are bound by their constructions except in extreme circumstances . . .

Mullaney, 421 U.S. at 691.

The Mullaney Court defined the extreme circumstances to warrant examination of State Court interpretations of State law, as follows:

> On rare occasions the Court has re-examined a State Court interpretation of State law when it appears to be an 'obvious subterfuge to evade consideration of a federal issue.' Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 129, 89 L.Ed. 2092, 65 S.Ct. 1475 (1945) . . .

Mullaney, 421 U.S. at 691, f 11.

Extreme circumstances warranting Supreme Court review, whch have been defined as an obvious subterfuge to evade consideration of a federal issue, are not present in the case at bar, and accordingly, this Court should honor the Connecticut State Court's decision ordering the Partition of the Zisk property by Sale.

The Supreme Court in Herb v. Pitcairn, 324 U.S. 117 (1945), gave the following explanation on the long standing limitation on review of State Court decisions:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds . . . The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that

> they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the said judgment would be rendered by the state court after we corrected its view of Federal laws, our review could amount to nothing more than an advisory opinion.

Herb, 324 U.S. at 125-26.

Accordingly, Respondent respectfully requests that Petitioner's Petition for Certiorari be dismissed on the ground that no federal question is raised.

II

EVEN IF THIS COURT FINDS A FEDERAL QUESTION, PETITIONER'S PETITION FOR WRIT OF CERTIORARI SHOULD STILL BE DISMISSED BECAUSE ANY FEDERAL QUESTION IS NOT SUBSTANTIAL, NOT RAISED IN A TIMELY MANNER, AND MOREOVER, THE CONNECTICUT STATE COURT DECIDED THE CASE EXCLUSIVELY ON ADEQUATE GROUNDS OF STATE LAW.

This Court should find Petitioner unsuccessful in his attempt to persumably raise a federal question by using the buzz words "due process" in his reasons for granting his Writ of Certiorari. (Brief of Petitioner, pages 11 and 14). Petitioner baldly claims, in part, that he was denied due process by the granting of the second partition complaint and that he was denied due process by the Court's denial of the Motion to Implead certain parties. Petitioner fails to set forth any reasoning as to why a due process analysis is even applicable here. The mere assertion of a "due process" violation does not convert a case which has absolutely no federal question into a case that thereafter has a federal question.

Nonetheless, assuming, arguendo, this Court were to even consider the case at bar as raising a federal question, the jurisdiction of this Court would still not be invoked for three reasons.

First, a federal question will not permit review unless it is substantial. Snowden v. Red River and Bayou, 284 U.S. 592 (1932) ("the Court, being of opinion that no substantial federal question is presented, dismisses the Writ of Certiorari.") A question as to federal law is not substantial if it "is wholly formal, or is so absolutely devoid of merit as to be frivolous, or has been explicitly foreclosed by a decision or decisions of the Supreme Court so as to leave no room for real controversy." C.A. Wright, The Law of Federal Courts 743-44 (1984). Here, any raising of a federal question by Petitioner is not substantial because it is wholly formal and so devoid of merit as to be frivolous. Accordingly, the jurisdiction of this Court is not invoked.

Second, assuming, arguendo, that this Court were to find a substantial federal question, it must be raised "in a proper and timely manner in the State courts." C.A. Wright, The Law of Federal Courts 744 (1984). Here, no federal question was raised or implicated at any time during the State court proceedings. The raising of a federal question for the first time in a Writ of Certiorari to this Court is clearly untimely.

Third, assuming, arguendo, this Court were to find a substantial federal question raised in a timely manner, this court's jurisdiction would still not be invoked. It is well-settled that this Court cannot review a state Court decision if the state Court has decided the matter, which has a federal question, on an adequate state ground. This principle was explained by the Court in McCoy v. Shaw, 277 U.S. 302 (1928), as follows:

It is settled law that a judgment of a State Court which is

> put upon a non-federal ground, independent of the federal question involved and broad enough to sustain the judgment, cannot be reviewed by this Court, unless the non-federal ground is so plainly unfounded that it may be regarded as essentially arbitrary or a mere device to prevent the review of the decision upon the federal question. Citations omitted.

McCoy, 277 U.S. at 303. See also Johnson v. New Jersey, 384 U.S. 719, 735 (1966).

Assuming, arguendo, that a federal question was raised in this matter, there can be no doubt that the granting of the partition by the Connecticut State Court rests on adequate state grounds, and therefore, this Court cannot review the state Court's decision.

III

THE PETITION FOR WRIT OF CERTIORARI IS DEFECTIVE BECAUSE PETITIONER DOES NOT APPEAL FROM THE JUDGMENT OR DECREE FROM THE HIGHEST COURT IN CONNECTITCUT.

In Petitioner's reasons for granting Writ of Certiorari, Petitioner requests this Court to review the judgment or decree of the trial Court (Brief of Petitioner, pgs. 11, 12, 14). Petitioner's Petition for Writ of Certiorari is defective because Petitioner does not request this Court to review a final judgment or decree rendered by the highest Court in Connecticut, which is the Connecticut Supreme Court. 28 U.S.C. § 1257 on State Courts; Certiorari provides in relevant part:

> Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court (emphasis added) . . .

Petitioner initially appealed the trial Court's decision to the Connecticut Appellate Court, and then after the lower Court's judgment was affirmed by the Appellate Court, he requested the Connectitcut Supreme Court to grant certiorari. Said Petition for Certiorari was denied. Because Petitioner requests this Court to review the judgment of the trial Court rather than the judgment or decree of the highest Court in Connecticut, Petitioner's Petition for Writ of Certiorari should be denied.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Repectfully submitted,

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On the brief

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February 6, 1995

APPENDIX A

CERTIFICATE OF DISTRIBUTION OF REAL ESTATE

STATE OF CONNECTICUT)
: ss Haddam Probate Court
COUNTY OF MIDDLESEX) March 11, 1971

I, Janet M. Kellner, Clerk of the Court of Probate of Haddam in said State, and keeper of the seal thereof, do certify that it appears from the records and files of this Court that William W. Zisk died a resident of County of Placer, California, owning property in said District on the 3rd day of February, 1969, intestate; that on the 17th day of January, 1970, Ancillary Administration on the estate of said deceased was granted to Mary A. Zisk, which appointment is still in full force and effect, and that on the 14th day of March, A.D., 1970 by a decree as of record will more fully appear said Court limited and allowed three months thereafter for the presentation of all claims against said deceased to the administrator of said estate and directed that public notice of said limitation be given as by statute required; that after the expiration of said three months said ancillary administratrix filed in Court an administration account and other returns, which have been accepted by the Court, from which it appears that public notice of said limitation was given as directed in said order and that all claims against said deceased presented to said ancillary administratrix within said time limited have either been paid, settled, or barred by law, and that all succession or inheritance taxes due the State of Connecticut have been fully paid and satisfied.

I further certify that the heirs-at-law and distributees of said estate have been ascertained by this Court to be

Mary A. Zisk	Wife	one-third
William J. Zisk	Son)	
Edward J. Zisk	Son)	
Marion A. Krivanec	Daughter)	two-thirds
Donald R. Zisk	Son)	

who took by inheritance all such right, title and interest as said deceased had at the time of his decease in and to four certain parcels of real estate situated in the Town of Haddam, County of Middlesex, State of Connecticut and more particularly bounded and described as follows, to wit.

FIRST PARCEL

An undivided one-third (1/3) interest in and to a certain piece or parcel of land, together with all the buildings and improvements thereon, located on the southerly side of Little City Road and the westerly side of Burr Road in the Town of Haddam, County of Middlesex, State of Connecticut, and containing sixty-eight (68) acres, more or less, and more particularly bounded and described as follows:

NORTHERLY	by Little City Road and land now formerly of Edward Jensen, partly by each;
EASTERLY	by Burr Road, land now or formerly of the Estate of Stella Stackpole, and land now or formerly of Charles E. Jackson, partly by each;
SOUTHERLY	by land now or formerly of the Estate of Stella Stackpole and land now or formerly of Charles E. Jackson, partly by each; and
WESTERLY	by land now or formerly of

Edward Jansen and land now or formerly of the Estate of Stella Stackpole, partly by each.

Being the same premises conveyed to said decedent, William Zisk, Mary A. Zisk and Edward J. Zisk by Warranty Deed of Helen Simkus, dated March 26, 1960 and recorded in the Haddam Land Records, Volume 91, page 318.

SECOND PARCEL

An undivided one-half (1/2) interest in a certain piece or parcel of land situated in the Village of Higganum in the Town of Haddam, County of Middlesex and State of Connecticut, bounded and described as follows:

The Homestead, so called, bounded by a line beginning on the highway at the northwest corner of said homestead property and running thence easterly by land of Frank Skrivanek, to land of Charles B. Carlson; thence southerly by lands now or formerly of Charles B. Carlson, Robert H. Carlson and Burr & Barone, Incorporated, to land now or formerly of Carl Andeen; thence westerly by land of Carl Andeen to the highway; thence northerly by highway to land of Herbert S. Johnson; thence easterly, northerly and northwesterly by land of said Herbert S. Johnson and land of Charles B. Carlson to land of Mazie M. Carlson; thence northerly and westerly by land of said Mazie M. Carlson to the highway; thence northerly by highway to the point of beginning, containing by estimation twenty-four (24) acres, more or less, with the dwelling house and all other buildings and improvements thereon, together with such rights of way and rights to maintin water pipes appurtenant to the land granted as of record may appear, and especially as described in deed from Charles B. Carlson to Otto F. Carlson dated August 1, 1908 and recorded in Vol. 47, pages 420, 421, and 422 of Haddam Land Records; the premises being also subject to

certain rights of way and to maintain water pipes, as by record will appear and especially as described in deed from Otto P. Carlson to Gustaf B. Carlson dated September 9, 1913 and recorded in Vol. 51, page 228 of Haddam Land Records, and in agreement between Otto F. Carlson and Charles B. Carlson dated August 18, 1916 and recorded in Haddam Land Records, Vol. 81, page 393.

THIRD PARCEL one-half (1/2) interest.

Being sprout land and containing seven (7) acres, more or less, bounded northerly and easterly by land now or formerly of Burr & Barone, Incorporated; southerly by land now or formerly of Mashinda and Carl Andeen and westerly by the Fourth Parcel herein described, it being the second piece described in deed from Charles B. Carlson to Otto F. Carlson dated August 1, 1908, recorded in Vol. 47, pages 420, 421, 422 of Haddam Land Records.

FOURTH PARCEL one-half (1/2) interest.

Being sprout land and containing one acre, more or less, bounded northerly by land formerly of Cyrus A. Hubbard, easterly by land formerly of Cyrus A. Hubbard, in part and partly by land formerly of James C. Walkley; southerly by land formerly of Cyrus A. Hubbard and westerly by land formerly of Chauncey D. Skinner being the same land described as the third piece in said deed of Carlson to Carlson, recorded in Vol. 47, pages 420-422 of said Haddam Land Records.

Said Second Parcel, Third Parcel and Fourth Parcel are the same premises described as the First Piece, Second Piece and Third Piece, respectively, in a deed to the decedent William W. Zisk and Mary A. Zisk from Beda L. Brainard, dated December 3, 1943 and recorded in the Haddam Land Records, Vol. 67, page 469.

IN TESTIMONY whereof, I have hereunto set my hand and affixed the seal of said Court on this 11th day of March, 1971.

[signed]
Attest Janet M. Kellner
Clerk

RECEIVED FOR RECORD
3/22 1971 at 9:00 A.M.
TOWN CLERK'S OFFICE
HADDAM, CONN.

[signed]
Beverly C. Rummel
Town Clerk

APPENDIX B

§ 45a-436. Succession upon death of spouse. Statutory share

(a) On the death of a spouse, the surviving spouse may elect, as provided in subsection (c) of this section, to take a statutory share of the real and personal property passing under the will of the deceased spouse. The "statutory share" means a life estate of one-third in value of all the property passing under the will, real and personal, legally or equitably owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.

(b) If the deceased spouse has by will devised or bequeathed a portion of his or her property to his or her surviving spouse, such provision shall be taken to be in lieu of the statutory share unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse may elect to take the statutory share in lieu of the provision of the will.

(c) The surviving spouse, or the conservator or guardian of the estate of the surviving spouse, with the approval, after public notice and hearing, of the court of probate by which such conservator or guardian was appointed, shall, not later than one hundred fifty days from the date of the appointment of the first fiduciary, as defined in section 45a-353, file a notice, in writing, of his or her intention to take the statutory share with the court of probate before which the estate is in settlement, and if such notice is not so filed, the surviving spouse shall be barred of such statutory share.

(d) If the court of probate has allowed a support allowance under section 45a-320 from the deceased spouse's estate for support of the surviving spouse and for the support of his or her family, the surviving spouse shall not take his or her statutory share until the expiration of the time for which the support allowance is made.

(e) The statutory share shall be set out by the fiduciary charged with the administration of the estate or, in the discretion of the probate court on its own motion or on application by any interested person, by distributors appointed by the court of probate. The statutory share may consist of personal property or real property, or both, according to the judgment of the fiduciary or distributors.

(f) The provisions of this section with regard to the statutory share of the surviving spouse in the property of the deceased spouse shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of the statutory share.

(g) A surviving husband or wife shall not be entitled to a statutory share, as provided in subsection (a) of this section, or an intestate share, as provided in section 45a-437, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

(h) The provisions of this section shall apply to estates of all persons dying on or after July 1, 1985.

(1949 Rev., § 7309; 1949, Supp § 598a; 1951, Supp. § 1283b; 1955, Supp. § 3002d; 1958 Rev., §§ 46-12, 45-273a; 1961, P.A. 64; 1963, P.A. 325; 1969, P.A. 233, § 1, eff. May 22, 1969; 1973, P.A. 73-36,

§ 1; 1976, P.A. 76-435, § 61, eff. June 9, 1976; 1978, P.A. 78-199, § 2; 1980, P.A. 80-476, § 322, eff. Oct. 1, 1980; 1985, P.A. 85-332, § 1, eff. July 1, 1985; 1987, P.A. 87-384, § 33; 1989, P.A. 89-56 § 1; 1990, P.A. 90-45, § 5; 1990, P.A. 90-146, § 9.)

Historical and Statutory Notes

Transfer of Section

This section was set out as § 46-12 and was transferred to as § 45-273a in Gen.St., Rev. to 1979.

This section, formerly set out as § 45-273a, was transferred to § 45a-436 in Gen.St., Rev. to 1991.